



**STATE OF  
SOUTH DAKOTA  
FORCE MAJEURE LAW  
COMPENDIUM  
(during COVID-19 pandemic)**

**Prepared by**  
Robert C. Riter  
Riter Rogers, LLP  
319 S. Coteau  
Pierre, SD 57501-0280  
605-224-5825  
[www.riterlaw.com](http://www.riterlaw.com)

## **A. Introduction**

This memorandum seeks to present a brief look at “force majeure clauses” in contracts in South Dakota in light of the ongoing COVID-19 crisis.

## **B. Force Majeure in South Dakota**

1. Introduction – Many business and commercial contractors need to know whether they will be liable for any inability to perform contract obligations. “Force Majeure” clauses generally provide that a party unable to perform under a contract due to the occurrence of certain designated events outside of their control, may suspend, delay or terminate its performance with limited liability. In the absence of any such force majeure language in the contract, parties are likely limited to the common law defenses of impracticability or frustration of purpose.
  2. Requirements to Obtaining Relief Using Force Majeure – Certain states define “force majeure” via statute. South Dakota is very limited in that regard. Also, South Dakota has little case law specifically addressing the application of force majeure provisions in the context of pandemics or outbreaks of disease. The only case discussing it relates not to contractual agreements but to the introduction of alcohol into an accused’s system by force majeure. *Utsler v. State*, 171 NW 2d 739 (S.D. 1969).
- C. South Dakota has considered circumstances of commercial frustration where performance has been objectively impossible because of facts the parties obviously could not expect to exist. *Groseth v. Intern, Inc. v. Tenneco, Inc.*, 410 NW 2d 159, 165, 166 (S.D. 1987). However, the fact that performance has become economically burdensome is not sufficient to excuse performance. *Mueller v. Cedar Shores*, 643 NW 3d 56, 70 (S.D. 2001)

Hence, in South Dakota while parties to an agreement with force majeure language can make an argument of distinct impossibility or impracticability, there are no South Dakota cases directly on point to demand a particular resolution.

Additionally, even if pertinent clauses do exist, be reminded that such provisions may demand timely notice and other procedural requirements.

**This Compendium outline contains a brief overview of certain laws concerning various litigation and legal topics. The compendium provides a simple synopsis of current law and is not intended to explore lengthy analysis of legal issues. This compendium is provided for general information and educational purposes only. It does not solicit, establish, or continue an attorney-client relationship with any attorney or law firm identified as an author, editor or contributor. The contents should not be construed as legal advice or opinion. While every effort has been made to be accurate, the contents should not be relied upon in any specific factual situation. These materials are not intended to provide legal advice or to cover all laws or regulations that may be applicable to a specific factual situation. If you have matters or questions to be resolved for which legal advice may be indicated, you are encouraged to**

**contact a lawyer authorized to practice law in the state for which you are investigating and/or seeking legal advice.**